

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-1273

ORIGINAL

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

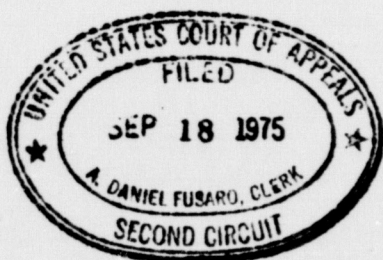
*Plaintiff-Appellee,*

vs.

LEON ROGERS,

*Defendant-Appellant.*

**APPENDIX FOR DEFENDANT-APPELLANT**



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*Attorney for Defendant-Appellant*  
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CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

1a

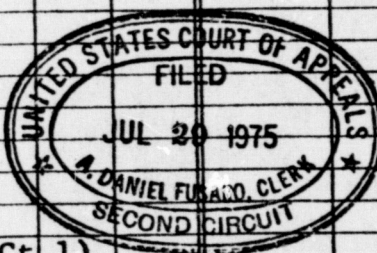
JUDGE BONSAI

75 CRIM. 402

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Steven A. Schatten, AUSA.
1. CHARLES COPPERS, a/k/a "C.J."-1&2	791-9154
2. LEON ROGERS-1&4	
3. MICHAEL MARCIANO-1,3&5	
4. THOMAS CARROLL-1,3&5	
5. VINCENT, MC CLUSKEY-1,3&5	
	For Defendant:

(01) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed 2 43	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371.659					
Consp. to commit interstate theft. (Ct. 1)					
Theft from interstate shipment. (2-5)					
( Five Counts)					



DATE	PROCEEDINGS
4-17-75	Filed indictment. (Superseding 74Cr1002 and referred to Bonsal, J.)
04-18-75	Filed affdvt. for writ of habeas corpus ad testificandum for Carlton Boyd. ret. 4-21-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Vincent McCluskey ret. 4-29-75.
04-22-75	Filed Govt.'s affdvt. for writ of habeas corpus ad pros. for Thomas Carroll ret. 4-29-75.
05-27-75	Jury trial begun before Judge Bonsal as to defts. L. Rogers, M. Marciano.
05-28-75	Trial cont'd.
05-29-75	Trial cont'd.
05-30-75	Trial cont'd. and concluded. Jury verdict defts. Rogers & Marciano guilty. Pre-sentence reports ordered. 7-14-75 set for sentence. Bail cont'd. Bonsal, J.



DATE	PROCEEDINGS
6-23-75	Filed Govt.'s request to charge.
6-23-75	Filed Govt.'s suppl. requests to charge.
6-23-75	Filed Govt.'s memo. of law on admissibility of prior similar acts.
7-14-75	Filed deft.'s notice of appeal from judgment docketed 7-14-75. mailed notices "Leave to appeal in forma pauperis is granted." Bonsal, J.
7-18-75	Filed CJA 20 approval of payment of fees of Lawrence Levner. Bonsal, J. (for deft. L. Rogers) issued copies CJA Clerk
7-14-75	LEON ROGERS-(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) YEARS on each of counts 1 and 4, to run concurrently with each other. Sentence is stayed pending appeal. Bail pending appeal fixed in the amount of \$25,000. PRB. Bonsal, J. issued all copies
7-14-75	MICHAEL MARCIANO(atty. present) Filed JUDGMENT- deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of NINE (9) MONTHS on count 1. Imposition of sentence on counts 3 and 5 is suspended. Deft. is placed on probation for a period of THREE (3) YEARS, on each count, to commence upon expiration of confinement, subject to the standing probation order of this Court. Probation on counts 3 and 5 to run concurrently with each other. Bail fixed at \$10,000. pending appeal. Bonsal, J. issued all copi
7-17-75	<del>Filed transcript of record of proceedings, dated May 27, 28, 29, 30, 1975.</del>
7-22-75	Filed deft. Michael Marciano's notice of appeal from judgment of July 14, 1975. mailed copies to U.S. Atty. and deft. on 7-22-75.

A TRUE COPY

RAYMOND E. THOMPSON, Clerk

By

G. G. Thompson  
Deputy Clerk

SAS:mb  
74-3397  
d-199

INDICTMENT (Filed April 17, 1975) (pp. 3a to 10a)

3a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 402

-----x  
UNITED STATES OF AMERICA :

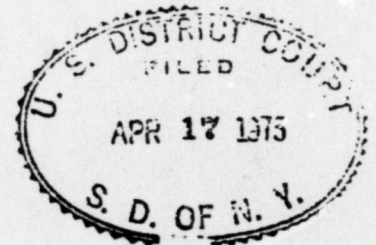
- v - :

INDICTMENT

CHARLES COPPERS, a/k/a "C.J.," :  
LEON ROGERS, MICHAEL MARCIANO, ✓ :  
THOMAS CARROLL and VINCENT :  
MC CLUSKEY, :

S. 75 Cr.

Defendants. :  
-----x



COUNT ONE

The Grand Jury charges:

1. From on or about the 15th day of August, 1971, up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together, and with each other, and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 659 and 2.



4a

2. It was part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly steal and take and carry away from a motor truck, with intent to convert to their own use, goods of a value greater than \$100 which were moving as, which were part of, and which constituted an interstate shipment of freight express.

3. It was further a part of said conspiracy that CHARLES COPPERS, a/k/a "C.J.," LEON ROGERS, and certain of their co-conspirators would unlawfully, wilfully and knowingly take, carry and deliver said goods of a value greater than \$100 to defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY.

4. It was further part of said conspiracy that defendants MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY would unlawfully, wilfully and knowingly buy, receive, have in their possession, sell

and dispose of the aforesaid goods of a value greater than \$100, knowing said goods to have been stolen.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others, were committed in the Southern District of New York, and elsewhere:

1. In or about December 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled from New York City to the Two Guys Bar in North Bergen, New Jersey.
2. In or about December, 1972, Carlton Boyd talked with MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY at the Two Guys Bar in North Bergen, New Jersey.
3. In or about December, 1972, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.
4. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.
5. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd, carrying a gun, and James Dixon entered an Arrow Transportation Company motor truck and ordered the driver out of the motor truck.
6. On or about the 15th day of December, 1972, in downtown Manhattan in New York City, Carlton Boyd and James Dixon placed the truck driver in the back seat of an automobile.
7. On or about the 15th day of December, 1972, Carlton Boyd and James Dixon travelled around New York City with the truck driver in the back seat of the automobile.
8. On or about the 15th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.," drove the Arrow Trans-



portation Company motor truck in downtown Manhattan in New York City.

9. On or about the 15th day of December, 1972, Carlton Boyd talked on the telephone with MICHAEL MARCIANO.

10. On or about the 17th day of December, 1972, CHARLES COPPERS, a/k/a "C.J.", Carlton Boyd and James Dixon sat in an automobile in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

11. On or about the 17th day of December, 1972, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 125th Street and the West Side Drive in Manhattan in New York City.

12. On or about the 17th day of December, 1972, in the vicinity of 125th Street and the West Side Drive in Manhattan in New York City, THOMAS CARROLL threw a bag containing \$3,600 into an automobile in which CHARLES COPPERS, a/k/a "C.J.," Carlton Boyd, and James Dixon were sitting.

13. On or about the 22nd day of January 1973, LEON ROGERS, Carlton Boyd and James Dixon travelled in an automobile in downtown Manhattan in New York City.

14. On or about the 22nd day of January, 1973 in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd entered a Connecticut Seafood Company motor truck with guns and ordered the driver out of the motor truck.

15. On or about the 22nd day of January, 1973, in downtown Manhattan in New York City, LEON ROGERS and Carlton Boyd placed the truck driver in an automobile.

16. On or about the 22nd day of January, 1973, Carlton Boyd and James Dixon travelled in New York City and New Jersey with the truck driver in the back seat of the automobile.

17. On or about the 22nd day of January, 1973, LEON ROGERS drove the Connecticut Seafood Company motor truck from downtown Manhattan in New York City to New Jersey.

18. On or about the 22nd day of January 1973 in New Jersey, Carlton Boyd had a telephone conversation with MICHAEL MARCIANO.

19. On or about the 22nd day of January, 1973, THOMAS CARROLL drove the Connecticut Seafood Company motor truck in New Jersey.

20. On or about the 25th day of January, 1973, LEON ROGERS, Carlton Boyd and James Dixon sat in an automobile in the vicinity of 177th Street and Broadway in Manhattan in New York City.

21. On or about the 25th day of January, 1973, THOMAS CARROLL and VINCENT MC CLUSKEY travelled in an automobile to the vicinity of 177th Street and Broadway in Manhattan in New York City.

22. On or about the 25th day of January, 1973, in the vicinity of 177th Street and Broadway in Manhattan in New York City, LEON ROGERS, Carlton Boyd and James Dixon received approximately \$5,000 from THOMAS CARROLL and VINCENT MC CLUSKEY.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the Southern District of New York, CHARLES COPPERS, a/k/a "C.J.," the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from an Arrow Transportation Company motor truck goods of a value greater than \$100.00, to wit, 645 cases of "Adria" canned hams, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)



COUNT THREE

The Grand Jury further charges:

On or about the 15th day of December, 1972, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit, 645 cases of "Adria" canned hams, which had been unlawfully stolen, taken and carried away from a motor truck in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 22nd day of January, 1973 in the Southern District of New York, LEON ROGERS, the defendant, unlawfully, wilfully and knowingly, and with intent to convert to his own use, did steal, take and carry away from a Connecticut Seafood Company motor truck goods of a value greater than \$100, to wit, 20,000 pounds of assorted frozen fish, which were moving as, which were a part of, and which constituted an interstate shipment of freight and express.

(Title 18, United States Code, Sections 659 and 2.)

COUNT FIVE

The Grand Jury further charges:

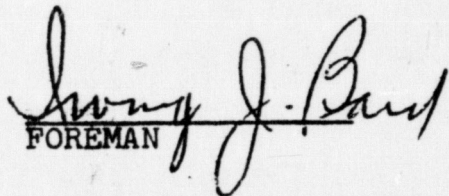
On or about the 22nd day of January, 1973, in the State of New Jersey, MICHAEL MARCIANO, THOMAS CARROLL and VINCENT MC CLUSKEY, the defendants, unlawfully, wilfully and knowingly did buy, receive and have in their possession goods of a value greater than \$100, to wit 20,000 pounds of assorted frozen fish, which had been unlawfully stolen, taken and carried away from a motor truck

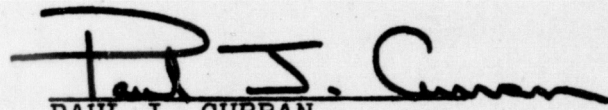
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in interstate commerce in the Southern District of New York, knowing the said goods to have been stolen and unlawfully taken and carried away from said motor truck.

(Title 18, United States Code, Sections 659 and 2.)

  
FOREMAN

  
PAUL J. CURRAN  
United States Attorney





**United States District Court**  
SOUTHERN DISTRICT OF NEW YORK  
THE UNITED STATES OF AMERICA

vs.

CHARLES COPPERS, a/k/a "C.J.,"  
LEON ROGERS, MICHAEL MARCIANO,  
THOMAS CARROLL and VINCENT McCLUSKEY,

Defendants.

**INDICTMENT**

S. 75 Cr.

(18 USC §§ 659 and 2.)

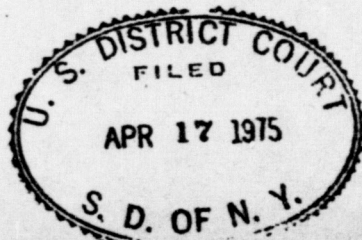
PAUL J. CURRAN

United States Attorney.

A TRUE BILL

*In my J. Carr*  
Foreman.

FD-56 (2-12-71) Form 6000



MAY 27 1975 JURY EMERGENCY  
RE: DEFTS. LEON ROGERS, MICHAEL MARCIANO

MAY 28 1975 TRIAL CONTD

MAY 29 1975 TRIAL CONTD

MAY 30 1975 TRIAL CONTD + CONCLUDED BY VERDICT

DEFTS ROGERS + MARCIANO GUILTY OF 1ST DEGREE

RECKLESS AND GROSSLY NEGLIGENT

SENTENCE BAIL CONTD.

BOYSALOT

(4)

CLERK  
RAYMOND E. BULLOCK  
CLERK

*A. J. Carr*

Indictment (Filed April 17, 1975) (pp. 3a to 10a)

JUL 14 1975 SENTENCE MICHAEL MARCIANO

CLAY KENNETH CLAUDAT (PRESENT)

ET AL COMMITTED TO CUSTODY OF CITY GEN

FOR IMPRISONMENT FOR 9 MONTHS

ET 3.5, IMPOSITION OF SENTENCE SUSPENDED

A PROBATION 3 YRS TO COMMENCE UPON

COMPLETION OF SENTENCE ON COURT

ET 3.5 TOLON CONFINED BAIL \$10,000

PENDING APPEAL, ADVISED OF RIGHT TO APPEAL

SENTENCE LEON ROGERS (PRESENT) COMMITTED TO CUSTODY OF

CITY GEN FOR IMPRISONMENT FOR 9 MONTHS

ET 3.5 TOLON CONFINED BAIL \$10,000

PENDING APPEAL, ADVISED OF RIGHT TO APPEAL

(3)



## CHARGE TO THE JURY (pp.11a to 55a)

469

jwp

THE CLERK: No, I haven't, Judge. I can find out downstairs.

Here he is now, Judge.

THE COURT: Well, they are all here, so that is that.

(In open court, jury present.)

THE COURT: Good morning, ladies and gentlemen. There was a little trouble on the subway this morning, I gather.

JURORS: Yes.

JUROR NO. 7: I was the one who was late. Sorry, your Honor.

THE COURT: That is not your fault. Blame it on the Authority.

Mr. Foreman, as you are, Mr. Horton, by virtue of occupying this chair, and Ladies and Gentlemen of the Jury:

First of all, I would like to join with the lawyers in thanking each of you for the care and attention which you have shown throughout this short trial and to tell you how much I appreciate the sacrifices I know that each of you have had to make in your own personal life so that you could serve in this very important public capacity of being on a Federal jury.

jwp

I am sure you will bear with me and give me the same degree of attention you have shown throughout so that you may understand the principles of law that apply to this case.

Remember I told you when you were selected that it is your duty here to weigh the evidence calmly and dispassionately without any sympathy and without any prejudice for or against either the government or these two defendants.

I told you that everyone appearing before this bar of justice is entitled to a fair and impartial trial, regardless of his occupation or station in life, and I told you that your verdict here must be based solely on the testimony that you have heard from that witness chair and on the exhibits which were received in evidence during the trial and on nothing else at all.

And I told you that it was my function to instruct you as to the law and on that you must accept my instructions, but, on the other hand, the jury are the sole judges of the facts. It is not what the lawyer says a witness testified to or the documents say, or what I say on that subject, but what you, the jury, remember and decide.

Remember I told you that during the trial I



1 jwp

2 would have conversations with one or the other of the  
3 lawyers -- and, indeed, I did; I sustained objections  
4 and I overruled them -- and I told you then, and I repeat  
5 now, please pay no attention to all that.

6 Above all, ladies and gentlemen, draw no  
7 inference from anything that I may have said during the  
8 course of this trial that might lead you to believe that  
9 I favor one side or the other here. Of course, I don't.  
10 That is not my province, that is your province.

11 Throughout this trial, ladies and gentlemen,  
12 I will instruct you that you may not convict either of these  
13 defendants unless and until you are satisfied that the  
14 government has proven each element of the crime charged  
15 beyond a reasonable doubt.

16 What do we mean by the words "beyond a reasonable  
17 doubt"?

18 Well, of course, the words suggest the answer.  
19 It is a doubt based on reason, a doubt which a reasonable  
20 man or woman might entertain. However, a reasonable doubt  
21 is not a fanciful doubt, not an imagined doubt, it is not  
22 a doubt that a juror might conjure up in order to avoid  
23 performing an unpleasant task. It is a reasonable doubt,  
24 it is a doubt which arises in the juror's mind because of  
25 something in the evidence in the case or lack of evidence

jwp

in the case. It is the kind of doubt which would cause a reasonable man or woman in a more serious and important affair in his or her own life to hesitate to act. And the burden is on the government to prove the guilt of a defendant beyond a reasonable doubt.

The government need not prove a defendant's guilt beyond all possible doubt. If that were the rule, few people, however guilty they might be, would ever be convicted.

In this world of ours it is practically impossible for one to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to mathematical decision or to mathematical certainty. So the law provides that the government prove the guilt of the defendant beyond a reasonable doubt, not beyond all possible doubt.

When I review the indictment with you, ladies and gentlemen, I remind you, as I told you at the outset, that the indictment is merely the statement of the charges, the way the government brings into court individuals which it claims have violated the law.

I told you that the indictment is not evidence of the guilt of either of these defendants, and the indictment does not detract in any degree from the presump-



jwp

ion of innocence with which the law surrounds each of these defendants until their guilt is proven.

This presumption of innocence remains with each of these defendants throughout the trial and applies to a consideration of each of the essential elements of the crimes charged, and this presumption of innocence remains unless and until you, the jury, are satisfied beyond a reasonable doubt of the guilt of a defendant as charged.

Each of these defendants had pled not guilty here and by doing so he has put in issue every material allegation in the indictment.

As I mentioned to you, the burden is on the government to prove each of these elements beyond a reasonable doubt.

Of course, if the government has not done so, then you would find the defendant not guilty with respect to that charge.

Bear in mind, ladies and gentlemen, that there are two defendants here -- Mr. Rogers and Mr. Marciano. They are charged as two individuals and the guilt or innocence of each of them is to be passed on by you separately.

Guilt or innocence is a personal thing and each of these defendants has the right to the same consideration on your part as if he were being tried alone.

jwp

Ladies and gentlemen, this has been a short trial and yesterday afternoon you heard the lawyers marshal the evidence for you in considerable detail. I am not going to review all that again because, as I mentioned to you, it is not what the lawyers say or what I say, it is what you, the jury, remember and recall.

I thought perhaps it might help you if I indicated very briefly the contentions of the parties, as I understand them, in the thought that might refresh your recollection. In any event, remember that it is your recollection and not mine that controls.

There are four counts in all in this indictment which you will consider. The first count charges conspiracy. I will call that the conspiracy count. Here the government contends that the defendants Rogers and Marciano were members of a conspiracy to unlawfully, wilfully and knowingly hijack trucks which were moving in interstate commerce and to deliver these trucks in New Jersey to Carroll, McCluskey and Marciano so that they could dispose of the contents.

The government contends that in furtherance of this conspiracy on December 15, 1972, Boyd, Dixon and Copper hijacked the Arrow Transportation Company truck containing some 645 cases of canned ham, if my recollection



jwp

1  
2 serves me, which truck was going from New York City to  
3 Pawtucket, Rhode Island.

4 And then on January 22, 1973, that the defendants  
5 Rogers and Boyd and Dixon hijacked a truck belonging to  
6 the Connecticut Seafood Transportation Company containing,  
7 as I recall it, some 30,000 to 40,000 pounds of frozen fish,  
8 and the truck was going from New York City to someplace in  
9 Connecticut.

10 You will hear a lot during the course of this  
11 about interstate commerce. That is why this case is in  
12 this court. Well, any trip or projected trip from New  
13 York to another State, whether it is New Jersey or whether  
14 it is Connecticut is interstate commerce.

15 On the alleged hijacking on January 22, 1973, the  
16 government contends that after the truck was hijacked it  
17 was taken over to New Jersey and with the help of the  
18 defendant Marciano turned over to Carroll and McCluskey  
19 at a diner on the other side of the Holland Tunnel.

20 In connection with count 1, as I recall it --  
21 and again it is your recollection that controls -- the  
22 government contends that in early December, 1972, Boyd,  
23 Dixon and Copper met Carroll and McCluskey at the Two Guys  
24 Bar in New Jersey and it was arranged that Boyd, Dixon and  
25 Copper would notify Carroll when they had a truck, when

1 they hijacked a truck, presumably, and that at this meeting  
2 Carroll introduced the defendant Marciano to Boyd, Dixon  
3 and Copper and told them that he would take the phone calls  
4 when Carroll was not at the bar.  
5

6 And the government contends that following this  
7 meeting at the Two Guys Bar again in December, '72, Boyd,  
8 Dixon and Copper made a number of trips around New York  
9 City looking for trucks to hijack and that thereafter on  
10 December 15th they did in fact hijack the Arrow truck and  
11 that that truck they left at the New Jersey diner.

12 As I recall it, Copper testified he drove the  
13 truck. It was too high to go through the tunnel and he  
14 went across the Verrazano Bridge, if I remember correctly.  
15 And that he left this New Jersey diner in accordance with  
16 defendant Marciano's telephone instructions to him; and  
17 that after that there was some testimony about the money  
18 that was paid to Boyd, Dixon and Copper. I think there  
19 may have been two payments. Anyway, as I recall, they  
20 received a total of \$3600 and it was split three ways.

21 Then in January, 1973, as I recall it, the  
22 government contends that this time Rogers, Boyd and Dixon  
23 were looking around town to see if they could find a shrimp  
24 and lobster truck and the government contends that on  
25 January 22, 1973, Rogers, Boyd and Dixon did hijack the



jwp

Connecticut Seafood truck and that Rogers drove it to New Jersey where it was delivered at the diner. I think it was the same diner.

On this occasion they contend that Boyd telephoned Marciano, defendant Marciano, from the diner and told him where they had the truck and that shortly thereafter Carroll came to the diner and picked it up.

With respect to this alleged hijacking, there also was evidence that following the delivery of the trucks the money was paid in New York. I think it was tossed out of the car in which McCluskey and Carroll had been traveling. And it amounted, as I recall the evidence, to some \$4000 or \$5000.

1           Those are the Government's contentions  
2           in the conspiracy count.

3           In Count 3 -- and I will review these with  
4           you more specifically in a little while -- the Govern-  
5           ment contends that defendant Marciano aided and abetted  
6           Carroll and McCluskey in the receipt of the Arrow truck  
7           which was hijacked on December 15, 1972, and that the  
8           defendant Marciano knew that the truck and the contents  
9           had been stolen.

10           In Count 4 the Government contends that the  
11           defendant Rogers participated in the hijacking of the  
12           Connecticut seafood truck on January 22, 1973 with the  
13           frozen fish, and I think I have reviewed that with you;

14           And finally in count 5 the Government  
15           contends that the defendant Marciano aided abetted  
16           Carroll -- and I will tell you what I mean by "aided  
17           and abetted" a little later on -- in receiving the  
18           truckload of frozen fish, which was the truck that was  
19           stolen or hijacked from the Connecticut seafood company  
20           on January 22, 1973.

21           Now, of course, each of the defendants,  
22           Mr. Rogers and Mr. Marciano, deny all of these con-  
23           tentions. They deny that they ever conspired with  
24  
25



ss2

Boyd, Dixon or Copper to hijack trucks or their contents, or that they conspired with them to receive the contents of the hijacked trucks in New Jersey.

Defendant Rogers denies that he participated in the January 22, 1973 hijacking, and he denies being present when and if it occurred.

He denies that he drove the truck as contended by the Government from New York to New Jersey.

The defendant Rogers testified, as I recall it, that he knew Boyd and Dixon -- sometimes, I think he said they had drinks together -- and he had a casual acquaintance with Copper. I think he said they all lived in the same neighborhood. And the defendant Rogers contends that the testimony of Boyd, Dixon and Copper given in this case was not credible and was given only to help themselves.

The defendant Marciano denies he had any participation in the conspiracy, and he denies that he assisted or aided and abetted Carroll and McCluskey in the receipt of the goods and their contents which had been hijacked.

He testified that he was employed during this period as a bartender at the Two Guys Bar, that his hours were between 10 and 3 p.m., as I recall it,

ss3

and that while so employed he would receive calls from people who might wish to talk to Carroll or to other people who frequented the bar.

He also testified, as I recall it, that there were a number of people besides himself called "Mike" who frequented the Two Guys Bar.

And the defendant Marciano also contends that the testimony of Boyd, Dixon and Copper was not credible and was given by them only to help themselves.

Now so much for the contentions. Now, mind you, they were very brief, and it is not what I say; it is what you remember that is important.

Now, ladies and gentlemen, there are two Federal statutes involved here. The first one is Section 659 of Title 18 of the United States Code which provides in relevant part:

"Whoever steals or unlawfully takes, carries away" -- well, a hijacking would encompass all of those things, I think we all understand that -- "a motor truck with intent to convert to his own use any goods or chattels moving as or which are a part or which constitute an interstate shipment is guilty of a crime."

Then the statute, the same section, goes on to



1 ss4

2 say:

3 "Whoever buys or receives or has in his  
4 possession any such goods or chattels, knowing the  
5 same to have been stolen, is guilty of a crime."

6 So on the first section it means that anybody  
7 who hijacks a truck moving in interstate commerce is guilty  
8 of a crime.

9 And the second part is that whoever takes that  
10 truck or the contents, knowing that the truck has been  
11 stolen, is guilty of a crime.

12 Then the second statute involved is Section 371  
13 of Title 18 of the United States Code. This is the con-  
14 spiracy statute which is the subject of the first count of  
15 the indictment.

16 That provides that if two or more persons  
17 conspire either to commit any offense against the United  
18 States--- now anybody who does these things, either hijacks  
19 trucks or receives goods from these trucks knowing that  
20 they were stolen, is committing an offense against the  
21 United States. So the conspiracy statute says that if  
22 two or more persons conspire to commit these offenses, and  
23 one or more of such persons does any act to effect the  
24 object of the conspiracy, each member of the conspiracy is  
25 guilty of a crime.

ss5

1                   So you will observe -- and that's why Count 1  
2  
3                   is there -- that a conspiracy to violate the statute that  
4                   I read to you is a crime separate and apart from the actual  
5                   violation.

6                   And so I will turn first to the conspiracy  
7                   count, which is Count 1.

8                   Now I will remind you again that the indictment  
9                   which I am referring to are merely the charges and not  
10                  evidence.

11                  Now, Count of the indictment reads as follows:

12                  "The grand jury charges:

13                  "1. From on or about the 15th day of August  
14                  1971, up to and including the date of the filing of  
15                  this indictment" -- there is nothing magic about  
16                  these dates. As I recall the testimony here, it  
17                  was December 1972 and January 1973, and that's  
18                  within this period, and there is nothing magic about  
19                  the 15th day of August of 1971 or the date of the  
20                  filing of the indictment. Then the indictment  
21                  goes on:

22                  "In the Southern District of New York."

23                  Now, that's important. The Southern District  
24                  of New York encompasses Manhattan and the Bronx. There  
25                  has been a lot of testimony about Manhattan and the Bronx.



ss6

1 "And elsewhere" -- "and elsewhere" here means  
2 New Jersey; I think that's the only other place about  
3 which we heard testimony --  
4

5 "Charles Copper, also known as 'CJ', Leon  
6 Rogers, Michael Marciano, Thomas Carroll and Vincent  
7 McCluskey, the defendants" --

8 now, here, of course you only consider the defendants  
9 Rogers and Marciano, although you heard testimony about  
10 some of these other people, and draw no inference, either  
11 favorable or unfavorable with respect to Rogers and  
12 Marciano by reason of the fact that they are the only  
13 ones who are on trial before you and not the others --  
14 the indictment goes on:

15 " -- the defendants, unlawfully, wilfully  
16 and knowingly did combine, conspire, confederate  
17 and agree together, and with each other, and with  
18 other persons to the grand jury known and unknown,  
19 to commit offenses against the United States,"  
20 and then they cite that statute that I read to you.

21 "2. It was part of said conspiracy that  
22 Charles Copper, also known as CJ, Leon Rogers, and  
23 certain of their co-conspirators would unlawfully,  
24 wilfully and knowingly steal and take and carry  
25 away from a motor truck, with intent to convert

1  
2 to their own use, goods of a value greater than  
3 \$100 which were moving as, which were part of, and  
4 which constituted an interstate shipment of freight  
5 express.

6 "3. It was further a part of said conspiracy  
7 that Charles Copper, also known as CJ, Leon Rogers,  
8 and certain of their co-conspirators would unlaw-  
9 fully, wilfully and knowingly take, carry and deliver  
10 said goods of a value greater than \$100 to defendants  
11 Michael Marciano, Thomas Carroll and Vincent  
12 McCluskey.

13 "4. It was further part of said conspiracy  
14 that defendants Michael Marciano, Thomas Carroll and  
15 Vincent McCluskey would unlawfully, wilfully and  
16 knowingly buy, receive, have in their possession,  
17 sell and dispose of the aforesaid goods of a value  
18 greater than \$100, knowing said goods to have  
19 been stolen."

20 Now you can see from this, ladies and gentlemen,  
21 that the defendants Rogers and Marciano are charged with  
22 being members of a conspiracy to commit offenses against the  
23 United States, that is, hijacking a truck and receiving the  
24 trucks and their contents knowing that they had been  
25 stolen and in deliberating on the conspiracy charge please



1  
2 consider each of the defendants separately.

3       There are three elements which the Government  
4 must prove beyond a reasonable doubt as to each of the  
5 defendants:

6       First of all, the Government must prove beyond  
7 a reasonable doubt that there was a conspiracy here of at  
8 least two people -- it takes two to conspire -- and the  
9 people mentioned here have been Coppers, Rogers, Marciano,  
10 Carroll and McCluskey -- if you find that there was a  
11 conspiracy of at least two of these people to commit these  
12 offenses against the United States to hijack trucks or to  
13 receive the trucks and the goods and their contents - that's  
14 the first element.

15       The second element is that the defendant you  
16 are considering knowingly and wilfully became a member of  
17 the conspiracy knowing what its objects were.

18       And the third element which the Government  
19 must prove beyond a reasonable doubt is that at least one  
20 of the overt acts set forth in the indictment -- I will  
21 read those to you in a few minutes -- was committed by one  
22 of the members of the conspiracy and that it was committed  
23 in furtherance of the conspiracy.

24       So going back to the first element: Was there  
25 a conspiracy here?       What is a conspiracy?       Well, a con-

ss9

1       spiracy is a partnership in crime.       It is a combination  
2       of two or more people to violate the law.       Of course, the  
3       Government need not prove that there was any formal or  
4       written agreement between the parties to establish a con-  
5       spiracy.       People who conspire to violate the law are  
6       not likely to put their arrangements in writing.       But,  
7       on the other hand, you must find from the evidence that two  
8       or more people came to an understanding for the purpose  
9       of accomplishing an unlawful purpose - in this case, hijack-  
10      ing trucks and receiving the goods and taking them from  
11      them.       And a conspiracy being a partnership in crime,  
12      every member of the conspiracy is responsible for what any  
13      other member of the conspiracy may do in furtherance of  
14      the conspiracy.

15  
16               So here, first of all, consider, does the  
17      evidence show here that the Government has proved beyond  
18      a reasonable doubt that there was a conspiracy?

19               If you so find then you reach the second  
20      element: Was the defendant you are considering -- and I  
21      told you to consider Rogers and Marciano separately -- a  
22      member of that conspiracy?

23               Now here you may not infer that a defendant was  
24      a member of the conspiracy because he may have known some  
25      of these other people or that he may have been present on



1 sls

2 some occasion with some of these other people, or even  
3 that he may have known that the other people were conspir-  
4 ing to hijack a truck.

5 You may not find him to be a member of the  
6 conspiracy unless you find on the evidence that he knowingly  
7 and wilfully joined the conspiracy, knowing of its purpose  
8 to hijack trucks and to receive goods.

9 So ask yourselves, ladies and gentlemen, on  
10 the second element: Did the defendant you are considering  
11 knowingly and wilfully join the conspiracy with the knowl-  
12 edge that his acts were a significant part in the enter-  
13 prise which the conspiracy was designed to carry out?  
14 And here consider the evidence as to the defendant's own  
15 acts, his own statements, his own conduct, and consider  
16 the evidence as to the acts and statements of others which  
17 you find bear on the issue of whether or not the defendant  
18 you are considering was a member of the conspiracy.

19 Now, ladies and gentlemen, the guilt of a  
20 conspirator is not measured by the extent of his participa-  
21 tion or by whether his role might have been a major one  
22 or a minor one. He is equally guilty if you find that  
23 he did participate in a conspiracy. But he must have  
24 known the purpose of the conspiracy here to hijack the  
25 trucks and to receive the stolen goods.

1 sls

2 Now, of course, the success of the conspiracy  
3 is not something that you need to consider. It is quite  
4 immaterial whether a conspiracy succeeds or not; a  
5 participant is guilty whether or not it succeeds.

6 In applying these standards, ladies and  
7 gentlemen, if you should find that the Government has not  
8 proved beyond a reasonable doubt that there was a con-  
9 spiracy here, or if you find it has proved that there was  
10 a conspiracy but has not proved that the defendant you are  
11 considering was a member of the conspiracy, then you must  
12 find that defendant not guilty on the conspiracy count,  
13 Count 1.

14 But, on the other hand, if you find that  
15 there was a conspiracy here and that the Government has  
16 proved beyond a reasonable doubt that the defendant you  
17 are considering knowingly and wilfully joined that con-  
18 spiracy, then you reach the third element which the Govern-  
19 ment must prove beyond a reasonable doubt, and that is  
20 whether one or more of the members -- it doesn't have to  
21 be the defendant you are considering because a conspiracy  
22 is a partnership in crime; it could be any member of the  
23 conspiracy -- committed at least one of the overt acts  
24 charged in the indictment in the Southern District of New  
25 York - Manhattan, Bronx - and that the act was in further-



1 sls

2 ance of the conspiracy.

3 Now, the indictment here, ladies and gentlemen,  
4 contains 22 overt acts, and as I read these overt acts I  
5 think you will recall that most of these were matters  
6 that were testified to by Mr. Boyd in his testimony.

7 The indictment reads:

8 "In furtherance of said conspiracy and to  
9 effect the objects thereof, the following overt acts  
10 among others were committed in the Southern District  
11 of New York, and elsewhere:

12 "1. In or about December 1972, Charles  
13 Copper, Carlton Boyd and James Dixon traveled from  
14 New York City to the Two Guys Bar in North Bergen,  
15 New Jersey" -- I don't know if it is North Bergen;  
16 it seems to me it was Secaucus, but I guess it  
17 doesn't make any difference; I guess they are  
18 around the same place --

19 "2. In or about December, 1972, Carlton Boyd  
20 talked with Michael Marciano, Thomas Carroll and  
21 Vincent McCluskey at the Two Guys Bar in North  
22 Bergen, New Jersey."

23 Now, I want to mention that overt act occurred  
24 in New Jersey, not in the Southern District of New York.  
25 So even if you found that the Government has proved that

1 sls

2 this happened in New Jersey you may not consider them  
3 having proved an overt act occurring in the Southern  
4 District of New York.

5 Then this goes on in like vein - and I don't  
6 know, I don't think I am going to read all of these things  
7 to you; I will send you a copy of this and you can read  
8 it, but as I recall it, in all events, they were testified  
9 to by Mr. Boyd.

10 And with respect to the overt acts you must  
11 find that at least one of these 22 overt acts was proven  
12 by the Government to have occurred beyond a reasonable  
13 doubt.

14 You must find further that it was committed  
15 in the Southern District of New York, Manhattan or the  
16 Bronx, and finally you must find that it was committed  
17 in furtherance of the conspiracy to hijack trucks or to  
18 receive the stolen goods.

19 Now, of course, an overt act may be nothing  
20 more than a telephone conversation; it may be a trip some-  
21 where; it may be a meeting on the street; it doesn't have  
22 to be a crime of itself. But you must find that what-  
23 ever it was it was something that was done in furtherance  
24 of this particular conspiracy.

25 So summarizing the conspiracy count, ladies



1 sls

2 and gentlemen, the Government must prove beyond a reason-  
3 able doubt here first that there was a conspiracy; second,  
4 that the defendant you are considering -- and you consider  
5 them separately -- knowingly and wilfully joined that  
6 conspiracy, knowing of its unlawful purpose; and, third,  
7 that at least one of the overt acts stated in the indictment  
8 was committed in the Southern District of New York, not  
9 necessarily by the defendants you are considering, but  
10 it was committed by a member of the conspiracy and in  
11 furtherance of the conspiracy.

12 All right, ladies and gentlemen, so much for  
13 the conspiracy count.

14 Then I would like to turn to Count 4. This  
15 is a little out of order. The counts you have are 1, 3,  
16 4 and 5, but I think it would be helpful if I turn to  
17 Count 4 which involves only the defendant Rogers; does  
18 not involve the defendant Marciano.

19 Count 4 reads as follows:

20 "The grand jury further charges:

21 "On or about the 22nd day of January, 1973 in  
22 the Southern District of New York, Leon Rogers,  
23 the defendant, unlawfully, wilfully and knowingly,  
24 and with intent to convert to his own use, did  
25 steal, take and carry away from a Connecticut

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2               seafood company motor truck goods of a value greater  
3               than \$100, to wit, 20,000 pounds of assorted frozen  
4               fish, which were moving as, which were part of, and  
5               which constituted an interstate shipment of freight  
6               and express."

7               And, of course, I have reviewed with you the  
8               contentions regarding this count.       This is the alleged  
9               second hijacking of January 22, 1973.

10              To find the defendant Rogers guilty of the  
11              crime charged in this count the Government must prove to  
12              you beyond a reasonable doubt each of the following  
13              elements:

14              First, that on or about January 22, 1973, a  
15              cargo containing the frozen fish in the Connecticut seafood  
16              truck was part of an interstate shipment of freight from  
17              New York City to Connecticut - and I think I have gone over  
18              what I meant by interstate shipment and interstate commerce.  
19              I think also in the evidence on this there were certain  
20              shipping documents that were introduced in evidence  
21              indicating where the truck was going to go.

22              The Government has got to prove that it was  
23              going in interstate commerce, but it doesn't have to prove  
24              that the defendant Rogers knew that the truck was moving  
25              in interstate commerce.       That isn't necessary.



1 sls

2 The second element which the Government must  
3 prove is that the value of the fish was greater than a  
4 hundred dollars. That is, the contents of the truck.  
5 Well, there was a certain amount of evidence on that.  
6 As I recall it, these were pretty big trucks, and I think  
7 you can probably pretty much use your common sense on that  
8 and determine on the evidence whether they were worth more  
9 than a hundred dollars. I would assume so; I don't  
10 know, but I would assume so myself.

11 Third, the Government must prove beyond a  
12 reasonable doubt that the defendant Rogers wilfully and  
13 knowingly hijacked the Connecticut seafood truck carrying  
14 the frozen fish.

15 Now, of course, here the Government need not  
16 prove that Rogers removed the fish. It's sufficient if  
17 they prove that he took the truck, that he took the truck  
18 and stole the truck and its contents. That is sufficient.

19 And what do I mean by stealing a truck?  
20 Well, hijacking is stealing. If you find that the  
21 defendant was seeking to take the truck to deprive the  
22 true owners of the fish because he wanted to take it for  
23 another purpose, that was stealing the truck.

24 And the fourth element which the Government  
25 must prove beyond a reasonable doubt is that the defendant's

1 sls

2 intention in stealing the truck was to convert the fish  
3 to his own use.

4 Well, all that means is that he was taking it  
5 for his own interest, not the owner's interest. He was  
6 taking it either to sell it himself or to get somebody else  
7 to take it over and sell it -- "fencing" I think it's  
8 called -- and that he was going to make some money out  
9 of it. He had a financial interest.

10 Now I would like to go back for one second in  
11 connection with that count - and this applies also to the  
12 other two substantive counts which are 3 and 5 which you  
13 will consider after you have reached a verdict on the  
14 conspiracy count.

15 If after considering the conspiracy count  
16 you should find that the defendant Rogers, in connection  
17 with Count 4, or the defendant Marciano in connection with  
18 Counts 3 and 5, was a member of that conspiracy -- in other  
19 words, if you find him guilty on the conspiracy count --  
20 and you find that the hijackings and the receipt of stolen  
21 goods, which are the subjects of these substantive counts,  
22 were committed by a member of the conspiracy and in further-  
23 ance of the conspiracy, then you may find that the defend-  
24 ants you are considering, Rogers in Count 4 and Marciano  
25 in Counts 3 and 5, guilty under those counts even though



1 sls

2 you find that Rogers did not actually do the things charged  
3 in Count 4 or that Marciano did not actually do the things  
4 in the other two counts. Because, as I told you here,  
5 a conspiracy is a partnership in crime, and therefore every  
6 member of the conspiracy is responsible for what any other  
7 member of the conspiracy may do in furtherance of the  
8 conspiracy.

9 And, finally, turning to Counts 3 and 5, which  
10 I will now read to you, and which as far as you are  
11 concerned involve only Mr. Marciano, Count 3 reads:

12 "The grand jury further charges:

13 "That on or about the 15th day December, 1972,  
14 in the State of New Jersey, Michael Marciano,  
15 Thomas Carroll and Vincent McCluskey" --

16 and, again, ladies and gentlemen, you only have to consider  
17 Michael Marciano, and please draw no inferences favorable  
18 or unfavorable with regard to him because Carroll and  
19 McCluskey are also named here --

20 "the defendants, unlawfully, wilfully and knowingly  
21 did buy, receive and have in their possession goods  
22 of a value greater than \$100, to wit, 645 cases of  
23 'Adria' canned hams, which had been unlawfully stolen,  
24 taken and carried away from a motor truck in inter-  
25 state commerce in the Southern District of New York,

1 sls

2 knowing the said goods to have been stolen and  
3 unlawfully taken and carried away from said motor  
4 truck."

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T3

2 Count 5 reads -- that is the December trans-  
3 action -- count 5:

4 "The grand jury further charges on or about  
5 the 22nd day of January, 1973, in the State of New  
6 Jersey, Michael Marciano, Thomas Carroll and Vincent  
7 McCluskey, the defendants, unlawfully, wilfully and  
8 knowingly did buy, receive and have in their possession  
9 goods of a value greater than \$100, to wit 20,000  
10 pounds of assorted frozen fish which had been un-  
11 lawfully stolen, taken and carried away from a motor-  
12 truck moving in interstate commerce in the Southern  
13 District of New York, knowing the said goods to have  
14 been stolen and unlawfully taken and carried away  
15 from said motor-truck."

16 So, in effect, the defendant Marciano is charged  
17 in these counts with the fencing operation, not the hijack-  
18 ing, but the receiving of the goods, the fencing of the  
19 goods.

20 You may not find him guilty under counts 3 and 5  
21 unless you find the government has proved the following  
22 elements beyond a reasonable doubt:

23 First, that the goods, the canned ham, I guess,  
24 in count 3, and the frozen fish in count 5, were moving in  
25 interstate commerce. I just covered that.

1 jwp2

2 As I recall it, the Arrow truck was going from  
3 New York to Pawtucket and the seafood truck was going from  
4 New York to Connecticut, and I told you that was interstate  
5 commerce. That is the first element.

6 The second element is the value of the goods  
7 was greater than \$100. Well, I think we had some  
8 testimony on that, I talked about that. I don't think that  
9 there is a serious question about that element.

10 The third element which the government must prove  
11 beyond a reasonable doubt on each of these counts 3 and 5  
12 is that the trucks and their contents, the fish or the ham,  
13 were stolen. Well, I have been over that with you, what we  
14 mean by stolen here.

15 The fourth element, which the government must  
16 prove beyond a reasonable doubt, is that the defendant took  
17 the goods, took receipt of the goods knowing that the goods  
18 were stolen. He doesn't have to know that they were stolen  
19 from an interstate shipment, but the government must prove  
20 that the defendant Marciano knew that the goods had been  
21 stolen.

22 In these two counts, ladies and gentlemen --  
23 and the evidence supports that -- the government is not  
24 contending that the defendant Marciano actually received  
25 the goods. There is no evidence that he did. The



1 jwp3

2 government is contending here that -- and, of course, Mr.  
3 Marciano denies it -- that the defendant Marciano aided  
4 and abetted Carroll and McCluskey.

5 Remember there was evidence that Carroll and  
6 McCluskey, that Carroll would pick up the trucks, that  
7 Carroll and McCluskey would deliver the money. And the  
8 government contends here that Marciano really aided and  
9 abetted Carroll and McCluskey in receiving the goods.

10 In considering whether or not the government has  
11 proved this, you should consider another Federal statute  
12 which is Section 2 of Title 18 of the United States Code,  
13 which provides that ".... whoever commits an offense  
14 against the United States, or aids and abets in its com-  
15 mission .... is punishable as a principal."

16 Now, all that means is that somebody who helps  
17 somebody else commit a crime is equally guilty of that crime.  
18 That is what the government is charging here. And, of  
19 course, the defendant denies it.

20 And all aiding and abetting means is to assist,  
21 to help in the commission of a crime.

22 And here before you can find the defendant  
23 Marciano guilty under either of these counts you must find  
24 that the government has proven beyond a reasonable doubt  
25 that he did aid and abet, assist Carroll and McCluskey.

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jwp4

You must find that he knew what the purpose of the venture was and that was to receive the goods taken from hijacked trucks and to dispose of them.

You must find that the defendant Marciano knowingly helped Carroll and McCluskey. And here, as I recall it, the government contends that in connection with the December 15, 1973, hijacking that Marciano told Cooper to take the Arrow truck to a diner in New Jersey.

And then also in count 5 the government contends that Marciano relayed to Carroll and McCluskey the information he obtained from Boyd that they had gotten the truck and were waiting at this diner on the other side of the Holland Tunnel. That is as I recall the evidence, but it is your recollection that controls.

Here again it is not enough the defendant Marciano may have known Carroll and McCluskey were engaged in this operation and were receiving stolen goods. It is not enough that he might have been present when they were doing it, or when they discussed the matter. Here you must find that he knowingly and wilfully participated with them in this operation.

And here again I remind you, as I mentioned to you a while ago, if you find that Marciano is a member of the conspiracy in the conspiracy count, then you may find that



1 jwp5

2 he did knowingly and wilfully participate with the others  
3 in the receipt of the stolen goods.

4 However, if you find that he was not a member  
5 of the conspiracy, you may only find him guilty of aiding  
6 and abetting, if you find that he knowingly and wilfully  
7 participated in the receipt of the stolen goods, that he  
8 sought to make the venture his own in some way, that he had  
9 a stake in the outcome financially or otherwise.

10 Now, you see from this, ladies and gentlemen,  
11 that an essential element in all these counts is the defend-  
12 ant's knowledge and intention. I have repeated a number of  
13 times that in a conspiracy count you must find the defendant  
14 was acting knowingly, wilfully and unlawfully. And the  
15 same is true of these other counts: did he have the criminal  
16 intent?

17 How do you determine whether or not he had the  
18 criminal intent? Well, an act is done knowingly and wilfully  
19 if it is done voluntarily and purposely. An act is done  
20 wilfully, knowingly and unlawfully if it is done with an  
21 evil motive or purpose such as to violate the law.

22 However, an act is not done wilfully, knowingly  
23 and unlawfully if it is done by mistake or by carelessness  
24 or by other innocent reason.

25 Obviously it is impossible to prove exactly what

1 jwp6

2 a defendant knew or what his intentions were on a particular  
3 occasion. We cannot look into a defendant's mind and see  
4 what knowledge he had at the time to determine his specific  
5 intentions. These are matters that you, the jury, may  
6 determine after a careful consideration of the facts and  
7 circumstances surrounding the transactions.

8 The knowledge and intentions of a defendant may  
9 only be understood when put in the context of the circum-  
10 stances surrounding his act and the inferences which you,  
11 the jury, find may be reasonably drawn therefrom.

12 You might ask yourselves whether these transactions  
13 appear to be normal or abnormal, whether they were open or  
14 surreptitious, whether you think the background of the  
15 defendant made it likely or unlikely that he fully under-  
16 stood what he was doing, whether you think the defendant had  
17 a motive, whether you think he had a financial or other  
18 interest in the outcome.

19 These are the kinds of questions that you should  
20 ask yourselves in determining whether a defendant had the  
21 criminal intent. And, of course, they are not the only  
22 ones and I don't suggest any answers to these questions  
23 because, after all, ladies and gentlemen, in your own daily  
24 affairs you are continually called upon to use your own  
25 common sense and experience to determine from the actions



45a

jwp7

or statements of others what their real intentions and purposes are. And please do the same thing here with respect to each of these defendants.

Now, you recall, I think it was yesterday at the conclusion of the government's case, there was introduced in evidence a record indicating that the defendant Marciano had been convicted in New Jersey of possession of some stolen air conditioners. Do you remember that? And I think when he took the stand he testified that he had pled guilty in that case.

Now, of course, he is not charged here with anything to do with air conditioners. This involves fish and hams, as I recall it. Therefore, you may not consider this evidence in determining whether or not Mr. Marciano did any of the acts here, except in considering Mr. Marciano's knowledge and intentions.

As I have now instructed you, you may consider this evidence only insofar as you find it bears on his knowledge and intentions at the time of the actions which he is charged with in this case.

The law recognizes two types of evidence, ladies and gentlemen - direct evidence and circumstantial evidence.

Direct evidence is testimony of a witness who personally observed a transaction or participated in the

1 jwp8

2 activity he is describing.

3 Circumstantial evidence consists of circum-  
4 stances from which the jury may infer by a process of  
5 reasoning certain facts that are sought to be established  
6 as true.

7 A classic example of circumstantial evidence is  
8 this:

9 They say we may have a thunderstorm this afternoon,  
10 and you might go home and your coat might be wet when you  
11 arrive home and somebody is watching television and looks  
12 at your wet coat and says, "It's raining outside." They  
13 haven't looked outside, they have looked at you and see  
14 your wet coat and by a process of reasoning they conclude  
15 it is raining outside. That is circumstantial evidence.

16 Of course, there is quite a lot of circumstantial  
17 evidence in this case, the circumstances surrounding these  
18 various transactions.

19 And circumstantial evidence is good evidence,  
20 just as good as direct evidence. But whether the evidence  
21 is circumstantial or direct the government must prove its  
22 case to you beyond a reasonable doubt.

23 Of course, different inferences may be drawn  
24 from the evidence, whether it is direct or circumstantial.  
25 Here the government will ask you to draw one set of in-



1 jwp9

2 ferences while the defendants will ask you to draw another.  
3 It is for you, the jury, to decide what inferences you will  
4 draw, what facts you find to have been proven.

5           However, remember that any inferences you draw  
6 must be reasonable inferences based on the evidence or  
7 lack of evidence.

8           Of course, you, ladies and gentlemen, are the  
9 exclusive judges of the credibility of the witnesses who  
10 appeared before you, and there is certainly a sharp dif-  
11 ference between the witnesses here. They can't all be  
12 telling the truth; no question about that.

13           I observed you. You gave careful attention to  
14 the testimony of the witnesses, and you will subject the  
15 testimony of all these witnesses to the same standard whether  
16 they were called by the government or the defendants.

17           I think one of the lawyers mentioned that it is  
18 the quality of the testimony, not the quantity that is im-  
19 portant, the testimony that you believe. And certainly  
20 in judging credibility you will consider the support or lack  
21 of support that a witness's testimony receives from other  
22 evidence and circumstances brought out during the trial.

23           And here again, ladies and gentlemen, in con-  
24 sidering the credibility of these witnesses, please use  
25 your plain everyday common sense. How did they impress you?

1 jwp10

2 Did you think they were testifying frankly, candidly and  
3 fairly?

4 So here again, ladies and gentlemen, apply your  
5 common sense and experience just as you do when you have to  
6 determine an important matter in your own life, when you  
7 have to decide if you have been given a true picture of a  
8 given situation.

9 You will consider, I would think, a witness's  
10 demeanor, background, his occupation or business, his  
11 prior criminal record, if any.

12 You consider his possible bias, means of informa-  
13 tion, the accuracy of his recollection, and you consider  
14 whether you find his testimony supported or whether you find  
15 it to be contradicted by other testimony or circumstances  
16 which you believe to be credible.

17 You will consider whether a witness has an  
18 interest in testifying. For example, we had an FBI Special  
19 Agent Smoot. He testified. He is a law-enforcement  
20 officer. He has an interest in prosecuting people he thinks  
21 violated the law.

22 Of course, that is an interest which you may con-  
23 sider. It doesn't mean that a witness will falsify or  
24 color his testimony because he has an interest. It is  
25 merely a factor for you, the jury, to consider.



1 jwpl1

2 Here both of the defendants - Mr. Rogers and Mr.  
3 Marciano - testified at the trial. They testified  
4 voluntarily. They didn't have to. Obviously each of them  
5 has a vital interest in this case and their interest is  
6 certainly one of the matters which you should consider in  
7 the credibility which you give their testimony and you  
8 should consider their testimony very carefully. But here  
9 again you may conclude that the defendant is telling you  
10 the complete truth despite his interest in the outcome.

11 You should certainly consider with great care the  
12 testimony of Boyd, Dixon and Copper. As I recall it, Copper  
13 told us he pled guilty to this very conspiracy.

14 Boyd and Dixon told us about the hijacking they  
15 were engaged in, and in a sense they were accomplices in  
16 hijacking trucks.

17 All of them testified they had trouble with the  
18 government and that they were hopeful that their testimony  
19 might help them obtain leniency of some kind.

20 So consider their testimony very carefully,  
21 ladies and gentlemen. And that is particularly true if  
22 you find that their testimony was not corroborated or  
23 supported by other evidence.

24 However, the testimony of these people is suf-  
25 ficient to convict the defendant if you believe it and it

1 jwpl2

2 convinces you of the guilt of the defendant you are con-  
3 sidering beyond a reasonable doubt. But in reaching that  
4 conclusion be sure to take into account whatever motive  
5 you find the defendant had in testifying the way he did  
6 and subject the testimony of each of these witnesses to  
7 close and searching scrutiny.

8 As I recall it yesterday, defendant Marciano  
9 called two character witnesses - I think the Reverend Cady  
10 and Sergeant Messina, if that is what his name was, from  
11 the Secaucus Police -- who testified as to Mr. Marciano's  
12 reputation for honesty and integrity.

13 Well, this evidence may be considered by you with  
14 all of the other evidence in determining Mr. Marciano's guilt  
15 or innocence and should be given such weight as you think it  
16 is entitled to.

17 Evidence of a defendant's good reputation, when  
18 considered with all of the evidence, may be sufficient to  
19 raise a reasonable doubt in your mind as to the defendant's  
20 guilt. But, on the other hand, if after considering all  
21 of the evidence with respect to Mr. Marciano, including  
22 the testimony I have just mentioned, you find him to be  
23 guilty beyond a reasonable doubt, then, of course, it is  
24 your duty to find him guilty, notwithstanding the testimony  
25 as to his reputation.



jwp

I have indicated to you -- and I will send the indictment in to you, ladies and gentlemen -- a separate crime or offense is charged in each of the four counts of the indictment. You will consider each count and the evidence applicable to them separately and as to each defendant.

The fact that you may find the defendant guilty or not guilty on one count does not control your verdict with respect to the other counts.

You will have the right to see any and all of the exhibits which have been introduced into evidence, but please let me know by telling the marshal.

As you deliberate, ladies and gentlemen, remember that jury deliberation is one in which everybody expresses his views and exchanges views. Don't be afraid to change your original view because of pride of opinion or stubbornness if for any reason at all you are convinced after talking to your fellow jurors that your original views were wrong.

But, on the other hand, ladies and gentlemen, if you have an honest conviction about it, never surrender that, never surrender your honest conviction here because you differ with your fellow jurors, or because you are outvoted. Never surrender your conscientious conviction.

jwp

You will seek to arrive at a verdict here consistent with the conscientious convictions of each and every one of you.

It is obviously important to both the government and each of these defendants that this case be decided by you.

This being a criminal case, ladies and gentlemen, your verdict must be a unanimous verdict, a verdict reflecting the conscientious conviction of each and every one of you.

Should you find that the defendant you are considering is not guilty, do not hesitate for any reason to render a verdict of not guilty. But, on the other hand, if you find that the law has been violated by the defendant you are considering as charged, you must not hesitate to render a verdict of guilty because of sympathy or any other reason at all.

Please do not consider the question of possible punishment in case you find the defendant guilty. Please don't let this enter into your deliberations in any way. You must not allow consideration of possible punishment to affect you or make you seek to avoid the performance of any unpleasant task.

I am sure, ladies and gentlemen, that if you



1 jwp

2 listen to the views of your fellow jurors and if you apply  
3 your own common sense you will reach a fair verdict here.

4 Remember that your verdict must be rendered  
5 without fear, without favor, without prejudice and without  
6 sympathy.

7 Will counsel come forward, please?

8 (At the side bar.)

9 MR. LEVNER: I have nothing at all, Judge, to  
10 add.

11 MR. DAVIE: Nothing, Judge.

12 THE COURT: Nothing?

13 MR. SCHATTEN: The only thing I would like to  
14 cover would be the government's contention in the indictment  
15 charging Boyd and Dixon were co-conspirators. I think the  
16 Court in effect pointed that out by calling them accomplices,  
17 but I would prefer "co-conspirators."

18 THE COURT: Do you fellows care?

19 MR. LEVNER: Most certainly. I think you covered  
20 every conceivable point in the charge.

21 THE COURT: He wants me to say that Boyd and  
22 Dixon were co-conspirators. I called them accomplices.  
23 I think he is trying to help you. I dont know that it  
24 makes much difference.

25 MR. LEVNER: I will waive the help, Judge.

1 jwp

2 THE COURT: How about you? Do you care about  
3 that?

4 MR. SCHATTEN: Your Honor, it's all right.

5 MR. DAVIE: I don't think it makes any difference.

6 THE COURT: All right. Thank you very much,  
7 gentlemen.

8 (In open court.)

9 THE COURT: Mr. Zapata, we have the same luck  
10 again. I am awfully sorry. Twice you had to sit  
11 through and listen to me. That is quite a burden.

12 And, Mrs. Maiorelli, yes, you two jurors that have  
13 been here to this point, it is my pleasure to excuse you  
14 and to thank you very much.

15 You must realize how important it was. Now,  
16 if that subway had been a little worse this morning we  
17 sure would have needed you.

18 Thank you very much.

19 What are their instructions?

20 THE CLERK: If you will report back to the central  
21 jury part, I think they will give you your certificates of  
22 attendance down there now.

23 (Two alternate jurors discharged.)

24 (Deputy marshal sworn.)

25 THE COURT: All right, ladies and gentlemen.



## Charge to the Jury (pp.11a to 55a)

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jwp

I am going to ask Mr. Wallace to mark as a Court exhibit this copy of the indictment.

Remember there is count 1, which is the conspiracy count. There isn't any count 2. Then there is counts 3, 4 and 5. And I think I have been over them with you.

Of course, your verdict on count 1, which covers both Mr. Rogers and Mr. Marciano, will be either guilty or not guilty; on count 4, which covers Mr. Rogers alone, your verdict will be guilty or not guilty; on counts 3 and 5, which cover Mr. Marciano alone, your verdict will be guilty or not guilty.

All right.

(Court's Exhibit 1 marked.)

THE COURT: All right, ladies and gentlemen. You may now retire to consider your verdict.

Let me suggest another thing. If you get back there and decide your deliberations will go until lunch, let the marshal know and he will get you some sandwiches.

Thank you very much.

(The jury left the courtroom to deliberate upon a verdict at 11.00 o'clock a.m.)

THE COURT: We will stand in recess, gentlemen.

(Recess.)

xx

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

LEON ROGERS,

Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

James A. Steele

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at  
310 W. 146th St., New York, N. Y.

That on the 18<sup>th</sup> day of Sept 1975 at 1 St. Andrews Plaza, N. Y., N. Y.

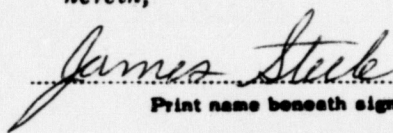
deponent served the annexed *Appendix*

upon

Paul Curran

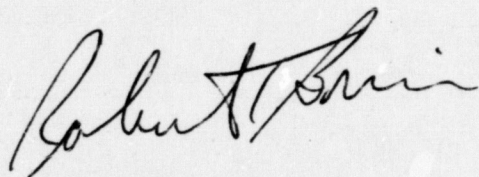
the U.S. Attorney in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the herein,

Sworn to before me, this 18<sup>th</sup>  
day of Sept 1975



Print name beneath signature

JAMES A. STEELE



ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977